

FILED

STATE OF NORTH CAROLINA 2019 OCT 23 AM 9:02 IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE SUPERIOR COURT DIVISION  
No. 19 CVS 012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL  
CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE  
SELECT COMMITTEE ON REDISTRICTING, *et al.*,

Defendants.

**PLAINTIFFS' MOTION TO  
STRIKE INTERVENOR-  
APPLICANTS' OPPOSITION  
TO PLAINTIFFS' MOTION  
FOR PRELIMINARY  
INJUNCTION AS  
UNTIMELY AND  
PREJUDICIAL**

Plaintiffs hereby move to strike Intervenor-Applicants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction as untimely and prejudicial.

Intervenor-Applicants missed the court-ordered deadline to submit a response to Plaintiffs' preliminary injunction motion. In its October 10 Order, this Court directed that "[i]f Intervenor-Applicants desire to respond to Plaintiffs' motion for preliminary injunction, they may submit a response brief to the Court by 5:00 p.m. on October 21, 2019." As explained in more detail in Plaintiffs' opposition to the motion to intervene, although the case was subsequently removed to federal court, the deadlines set forth in the October 10 order remained "in full force and effect" while the case was pending in federal court pursuant to 28 U.S.C. § 1450.

Because the October 10 scheduling order remained in effect while the case was temporarily in federal court, both Legislative Defendants and State Defendants filed their respective responses to Plaintiffs' preliminary injunction by court-ordered deadline of 5:00 p.m. on October 21. *See* State Defs.' Resp. to Pls.' Mot. for Prelim. Inj. at 2 n.2 (Oct. 21, 2019) (explaining that, under 28 U.S.C. § 1450, the October 10 order remained in place in federal court after the removal). But Intervenor-Applicants did not file their preliminary injunction opposition until 3:05 p.m. on October 22—nearly a full day after the court-ordered deadline and barely 24 hours before Plaintiffs' reply brief is due. Their brief is untimely and the Court should strike it. *See, e.g., Ellis v. Int'l Harvester Co.*, 178 N.C. App. 741, 632 S.E.2d 599 (2006) (granting motion to strike brief that was filed untimely). Intervenor-Applicants' brief does not even acknowledge that the brief is untimely, much less attempt to explain the failure to meet the court-ordered filing deadline. Intervenor-Applicants did not seek leave to file their brief out of time or otherwise justify the late filing.

Intervenor-Applicants' 61-page brief and supporting affidavits are not only untimely, but highly prejudicial to Plaintiffs. Under the Court's October 10 Order, Plaintiffs' preliminary injunction reply brief is due at 5:00 p.m. tomorrow, October 23. As we speak, Plaintiffs are preparing their reply to the arguments in Legislative Defendants' 47-page opposition brief. It is highly prejudicial to force Plaintiffs also to respond to an additional 61 pages of arguments and affidavits submitted belatedly by Intervenor-Applicants barely a day before Plaintiffs' reply is due, and to be prepared to present argument about them at the October 24 hearing.

For the foregoing reasons, the Court should strike Intervenor-Applicants' preliminary injunction opposition brief as untimely and prejudicial, and should not permit Intervenor-Applicants to present argument on the preliminary injunction motion at the October 24 hearing.

Respectfully submitted this the 22nd day of October, 2019

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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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